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SUBJECT: SPAIN'S COMPETITION TRIBUNAL TRAVEL TO WASHINGTON
FOR ADVICE ON REFORM

1. Summary: The President of Spain's Competition Tribunal Gonzalo Solana Gonzalez travels to Washington next week to meet with U.S. Foreign Trade Commission officials, the Department of Justice and International Financial Institutions (IFIs). Solana's goal is to discuss proposed reforms to competition law in the with American counterparts on one hand, and seek funding for their work with Latin American competition authorities from IFIs on the other hand. In recognition that Spain is behind other European countries in competition policy, the Minister of Economy Pedro Solbes has made unifying the current Competition Service of the Ministry of Economy and the Competition Tribunal into one independent administrative organ. End Summary.

Weaknesses of Current Competition Policy

2. Spain's current competition policy is carried out by two separate organizations. The Ministry of Economy's Directorate General of the Defense of Competition (Competition Service) conducts investigations of alleged breaches of competition. The semi-independent Competition Tribunal then judges the cases and metes out penalties. These two authorities are responsible for competition policy at the national level. If a monopoly or cartel only affects an autonomous region in Spain, regional governments have the authority to investigate and try the case.

3. The Ministry of Economy has identified several weaknesses with the current competition policy system in Spain. Elimination of cartels in Spain in the past 15 years has been poor in certain sectors, notably sugar, beer, iron and drivers' training schools. The division of labor between the investigative arm and the tribunal duplicates work and causes a slow process from complaint to resolution. A recent telecom case required two years to resolve in which time the competitor bringing the complaint went out of business. The final weakness noted by the Ministry is that competition authorities are not consulted by Parliament on all laws that affect competition such as electricity or telecom law, but only on pure competition law.

Reform Proposal

4. The Ministry Economy's proposed reform of Spain's competition authorities in early 2005 is one of the centerpieces in Spain's economic reforms. The white book describing the reforms and the Ministry's analysis was released in late January. Other ministries and corporations were given two months for comment. The Ministry of Economy is currently considering the commentary and is preparing the bill for Parliament. Once completed, the Competition Tribunal will provide their testimony to the Parliament. The law is expected to pass and be implemented by May 2006.

5. The broad changes made in the white book proposal begin with the unification of the investigation and resolution responsibilities into one independent National Commission for the Defense of Competition (the Commission) to increase efficiency and reduce duplication of work. The ability to punish offenders would be conducted in an administrative manner, and be taken to an independent court only if requested. The nomination of members of the Commission would be less political. Currently the majority government names members of the Competition Tribunal, and the Minister of Economy chooses the head of the Competition Service. The Ministry is considering ways of making the naming process more independent. The reform will also consider clarifying the role of the Commission in competition policy vice the Telecommunications Commission and energy regulators.

6. More specific technical changes that the reform proposal addresses include an elimination of a company's ability to request an individual exemption from competition law if the benefits to society outweigh negatives. Such a finding will only be made after a complaint has been filed according to EU law. Merger decisions will devolve to the Competition Commission that are now made by the elected government. An issue that remains outstanding is if the government will maintain a veto over the Commission's decisions as is allowed

in Germany.

17. Two additional points the Ministry of Economy's reform proposes are similar to the American system. The Ministry wants to introduce leniency for members of cartels that participate in competition proceedings. Fifteen of the 25 European countries currently allow leniency for cooperation and 80% of European cases begin in this manner. The law will also propose allowing civil trials to consider competition law parallel to the commission. Currently, all civil cases are suspended until the Competition Tribunal makes a decision. After reform, a company should be able to file a complaint with the Commission, and sue in civil court.

Trip to Washington

18. The President of the Competition Authority Gonzalo Solana Gonzalez and his Chief of Staff Antonio Guerra are traveling to Washington next week to meet with representatives of the Foreign Trade Commission and the Department of Justice to receive advice on reform. They are particularly interested with the U.S. experience on leniency in competition investigations. Solana is also interested in learning about private or civil enforcement of competition law in U.S. courts. Finally, they want to ask about the FTC' and Justice' advocacy in lobbying congress on competition issues.

19. Solana and Guerra will also be talking to IFIs institutions in Washington such as the International Monetary Fund, the World Bank and the Inter-American Development Bank to seek funding for Spain's work in Latin America. Spain and Portugal have been holding an Iberoamerican Forum on Competition Policy with Latin American competition authorities for five years. Spain funds a competition course for government officials each year in Madrid. They would like to obtain further funding to help competition authorities develop further in the Latin American region.

110. Comment. The Ministry of Economy is interested in assuring that competition policy in Spain becomes more effective. Weak competition in Spain's economy remains a problem and behind much of Europe. The Ministry wants to try to create a more competitive and fair environment in Spain as well as catch up with European neighbors. Spain needs to overcome the legacy of the monopolistic corporate behavior of the Franco years and the "national champion" policies of the 90s that have endowed Spain with strong energy, banking and telecommunications competitors in Latin America, but have reduced competition at home.

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